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VITALIY Y. MATVILIV, Appellant)	
)	
and)	Docket No. 05-1328
)	Issued: October 26, 2005
DEPARTMENT OF TRANSPORTATION,)	
FEDERAL AVIATION ADMINISTRATION,)	
Teterboro, NJ, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

On June 7, 2005 appellant filed a timely appeal from a March 25, 2005 merit decision of the Office of Workers' Compensation Programs denying his claim for a traumatic injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant sustained an emotional condition as a result of a February 2, 2005 employment incident.

On February 2, 2005 appellant, then a 30-year-old air traffic control specialist, filed a traumatic injury claim alleging that on that date he sustained anxiety after witnessing an airplane go off the runway and crash into a building. A witness provided a statement that appellant

“looked pale and nervous” after the plane left the runway. He stopped work on February 3, 2005.

By letter dated February 10, 2005, the Office requested additional factual and medical information from appellant. The Office advised him to submit a detailed medical report from a psychiatrist or clinical psychologist in support of his claim.

In a statement dated February 20, 2005, appellant related that, while working as a ground control trainee in the control tower on February 2, 2005, he witnessed a plane go off the runway and hit a building. He stated, “When the plane hit the building I saw a fireball – what appeared to be an explosion.” Appellant asserted that he felt “very upset, sad, [and] very shaky” after witnessing the crash. He indicated that he called a clinical psychologist the following day.

By decision dated March 25, 2005, the Office denied appellant’s claim on the grounds that he did not establish an injury as alleged. The Office found that the evidence supported that he “actually experienced the claimed incident” but noted that he had not submitted any medical evidence and thus had not established an injury due to the employment incident.

LEGAL PRECEDENT

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment; liability does not attach merely upon the existence of an employee-employer relationship.¹ Instead, Congress provided for the payment of compensation for disability or death of employee resulting from personal injury sustained while in the performance of duty.²

The Board has interpreted the phrase “while in the performance of duty” to be the equivalent of the commonly found requisite in workers’ compensation law of “arising out of and in the course of employment.” “In the course of employment” deals with the work setting, the locale and time of injury whereas, “arising out of the employment,” encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury. In addressing this issue, the Board has stated that in the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master’s business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.³

To establish appellant’s claim that he has sustained an emotional condition in the performance of duty, he must submit the following: (1) medical evidence establishing that he has an emotional or psychiatrist disorder; (2) factual evidence identifying an employment factor

¹ *Kathryn S. Graham Wilburn*, 49 ECAB 458 (1998).

² *Id.*

³ *Id.*

or incident alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factor is causally related to his emotional condition.⁴ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor.⁵ The opinion of a physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor identified by the claimant.⁶

ANALYSIS

In this case, the Office properly found that the evidence supported the occurrence of the alleged employment incident. Appellant provided a consistent history of injury and included a witness statement. Additionally, as the incident occurred while he was engaged in his employer's business, at a place where he could reasonably be expected to be and while he was fulfilling the duties of his employment, it is a covered factor of employment.⁷ In *Lillian Cutler*,⁸ the Board explained that where an employee experiences emotional stress in carrying out employment duties and the medical evidence establishes that the disability resulted from his or her reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment, and would therefore come within coverage of the Act. In this case, however, the record is devoid of any medical evidence. As the record contains no medical evidence diagnosing a condition causally related to the February 2, 2005 incident, appellant has failed to submit the evidence necessary to establish an essential element of his claim. Consequently, he did not meet his burden of proof to establish an injury as alleged.

On appeal, appellant asserts that the Office failed to consider that he missed three days work and received treatment from a psychologist. It is, however, appellant's burden to submit the essential elements of his claim, which includes the submission of medical evidence establishing the existence of the alleged emotional condition and its relationship to a compensable employment factor.⁹

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition as a result of a February 2, 2005 employment incident.

⁴ *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003).

⁵ *Conrad Hightower*, 54 ECAB ____ (Docket No. 02-1568, issued September 9, 2003).

⁶ *Jamel A. White*, 54 ECAB ____ (Docket No. 02-1559, issued December 10, 2002).

⁷ *Maribel Dayap*, 48 ECAB 248 (1996).

⁸ 28 ECAB 125 (1976).

⁹ See *Marlon Vera*, *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 25, 2005 is affirmed.

Issued: October 26, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board